



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 16, 2015

Mr. Aaron P. Wood
216 W. 2nd St.
Madison, IN 47250

Mr. Warren A. Auxier
P.O. Box 215
Hanover, IN 47243

Re: Formal Complaint 15-FC-55 (Consolidated); Alleged Violation of the Access to Public Records Act by the Madison Consolidated School Corporation

Dear Mr. Wood and Mr. Auxier,

This advisory opinion is in response to your formal complaint(s) alleging the Madison Consolidated School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The School has issued a response via counsel, Jean M. Blanton, Esq. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint(s) received by the Office of the Public Access Counselor on February 13 and 19, 2015. Your complaints have been consolidated.

BACKGROUND

Your complaints dated February 13 and 19, 2015, allege the Madison Consolidated Area Schools violated the Access to Public Records Act by denying access to a public record. Mr. Wood's complaint also alleged a violation of the Open Door Law through the copyrighting of the record, but the application of the Open Door Law is germane to this consideration and the issue is solely an APRA matter.

On February 11, 2015, the School conducted a meeting of the Board of Trustees. This meeting was recorded by Digital Dreams Inc., pursuant to an agreement with the School. On February 15, 2015, Mr. Wood attempted to obtain a copy of this recording and was denied. Mr. Auxier attempted likewise on February 18, 2015. On February 19, 2015, Mr. Auxier was served with a denial stating Madison "does not maintain videos of school board meetings" but the record was available online. Mr. Auxier maintained his request for a physical copy, citing APRA. Mr. Wood also seeks a physical copy, but contends the

recording is copyrighted and therefore cannot be edited by interested members of the public.

On March 2, 2015, counsel for the School responded to the complaint. According to the School, Wood's assertion the video is copyrighted is inaccurate and asserts Wood failed to make a request for the video prior to making his complaint.

Counsel contends neither School Board members nor administrative officials are provided physical copies of recordings, which are available online. According to the School, the contract between the School and Digital Dreams does not provide the School with a physical copy of recordings and that the School is not under any obligation to produce records not in its possession. Counsel believes the School is not under the obligation to go to additional expense to obtain a recording when the reason for recordings is to accommodate the public, not to comply with public access laws.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Madison Consolidated School Corporation is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the School's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A public agency is not required to create a record in response to a request, and it is not required to produce a record it does not have. However, a public agency cannot contravene public access by outsourcing the creation of public records to a third party thereby disavowing ownership or custody of the records.

The Court of Appeals in *Knightstown Banner, LLC v. Town of Knightstown*, 838 N.E.2d 1127, 1131 (Ind. Ct. App. 2005) discussed this issue at length and came to the conclusion government entities cannot conceal public records by delegating a public duty to a private entity. This is true even if the act of recording the meeting is voluntary and not required by Indiana statute. The School has commissioned a vendor to create a public record. But for the agreement with the vendor, the recording would not exist.

With regard to Mr. Wood's allegation the recording is copyrighted, proprietary records notwithstanding; a public agency may not claim a copyright on a public record which would normally be a disclosable public record. Such a record is, for all intents and purpose, the very definition of public domain.

Because it is a public record in the custody of the School, the School must make reasonable efforts to provide a copy upon request. See Ind. Code § 5-14-3-3(d).

Furthermore, a requester is entitled to at least one copy of a public record pursuant to Ind. Code § 5-14-3-8(e). Online inspection is not sufficient if the requestor insists on a copy.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Madison Consolidated School Corporation must make reasonable efforts to provide a copy of the video upon request.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt
Public Access Counselor

Cc: Jean M. Blanton, Esq.